

ESTTA Tracking number: **ESTTA498137**

Filing date: **10/04/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204465
Party	Plaintiff BLANCO GmbH + Co KG
Correspondence Address	HEATHER A SISCEL HANLEY FLIGHT ZIMMERMAN LLC 150 SOUTH WACKER DRIVE, SUITE 2100 CHICAGO, IL 60606 UNITED STATES jjasper@hfzlaw.com, hsiscel@hfzlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Heather Siscel, Attorney, IL Bar Member
Filer's e-mail	hsiscel@hfzlaw.com
Signature	/Heather A. Siscel/
Date	10/04/2012
Attachments	A 175 268f Petitioner's Brief in Opposition to Amended Motion to Dismiss.pdf ( 4 pages )(213064 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BLANCO GmbH + Co KG ) Opposition No. 91204465 (VLANCO, App. 85/389,037)  
 ) (Parent Case)  
 Petitioner, )  
 ) Cancellation 92054358 (VLANCO, Reg. 3,588,180)  
 ) Opp. 91205767 (VLANCO, App. 85/509,987)  
 vs. )  
 ) Opp. 91205768 (VLANCO, App. 85/530,847)  
 )  
 ) Opp. 91206218 (LINEA LAV BY VLANCO, App. 85/531,741)  
 Vito Laera )  
 ) Opp. 91206219 (LINEA CUCINA BY VLANCO, App. 85/531,746)  
 )  
 ) Opp. 91206391 (VLANCO, App. 85/591,837)  
 Defendant. )  
 ) Opp. 91206512 (WWW.VLANCO.COM, App. 85/591,811)  
 )  
 ) Opp. 91206801 (VLANCO FIRECLAY, App. 85/591,858)  
 )  
 ) Opp. 91206802 (VLANCO GRANIT, App. 85/591,847)  
 )  
 ) Opp. 91206803 (VLANCO.COM, App. 85/643,204)  
 )  
 ) Opp. 91206822 (VLANCO WHITE, App. 85/655,815)  
 )  
 ) Opp. 91207027 (LINEA VLANCO, App. 85/616,890)

**PETITIONER’S BRIEF IN OPPOSITION TO  
DEFENDANT’S AMENDED MOTION TO DISMISS**

On September 28, 2012, Defendant Vito Laera (“Defendant”) filed an Amended Motion to Dismiss Opposition No. 91207027 (“Amended Motion”).<sup>1</sup> The Amended Motion is again off topic. Defendant merely continues to contest the alleged descriptiveness of U.S. Trademark Reg. 1,555,655 for BLANCO (“the BLANCO mark”)<sup>2</sup> and introduces unrelated applications of a subsidiary of the Petitioner, BLANCO GmbH + Co KG. The Amended Motion is irrelevant because the Amended Motion fails to remotely relate to the sufficiency of Petitioner’s Notice of

---

<sup>1</sup> Opposition No. 91207027 was consolidated with Opposition No. 91204465 (the parent case) and Opposition No. 91204465 was suspended pending other motions to dismiss. Though Opposition No. 91204465 is suspended, Petitioner files the present Brief as it is germane to Defendant’s Amended Motion to Dismiss Opposition No. 91207027 and to make clear that Petitioner does not concede or consent to Defendant’s actions.

<sup>2</sup> The BLANCO mark (U.S. Trademark Reg. No. 1,555,655) is incontestable pursuant to 15 U.S.C. § 1065 and, thus, may not be cancelled based on descriptiveness. As the Trademark Trial and Appeal Board (“Board”) is well aware, Defendant’s repeated attempts to cancel the BLANCO mark on the ground of alleged descriptiveness (e.g., in Cancellation Nos. 92054358 and 92055475) were dismissed with prejudice by the Board. In addition, the issue is irrelevant as to whether Petitioner has sufficiently set forth the factual and legal bases of the assertions in the Notice of Opposition against the mark LINEA VLANCO.

Opposition against the LINEA VLANCO mark (U.S. Trademark App. Serial No. 85/616,890). Defendant fails to provide even a modicum of discussion of the standards needed to prevail on a Motion to Dismiss and further completely fails to discuss anything related to the LINEA VLANCO mark.

Pursuant to Fed. R. Civ. P. 12(b)(6) and TBMP § 503.02, “[a] motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint.” For purposes of determining a motion to dismiss for failure to state a claim upon which relief can be granted, all of plaintiff’s well-pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to plaintiff. *See Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157 (Fed. Cir. 1993). Construing the Notice of Opposition liberally and accepting all well-pleaded allegations as true, Petitioner has sufficiently alleged such facts as would, if proved, establish that Petitioner has standing to maintain the opposition proceedings and valid grounds of likelihood of confusion and dilution exist for opposing the mark subject to the instant proceeding. Defendant has not shown that Petitioner’s pleadings are legally defective in any way. Nothing Defendant offers relates to the determination of whether Petitioner has stated a claim upon which relief can be granted.

Petitioner, BLANCO GmbH + Co KG, hereby incorporates by reference the statements and allegations contained in Petitioner’s Brief in Opposition to Defendant’s Motion to Dismiss filed on September 26, 2012 (“the First Brief”). For the reasons cited above and for the reasons and precedential case law incorporated by reference from the First Brief, Petitioner respectfully requests that the Board deny the Defendant’s Amended Motion. Should the Board find Petitioner’s pleadings to be somehow defective, leave to amend to correct the perceived deficiencies should be granted.

Petitioner notes that TBMP § 503.03 provides that if, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are submitted and not excluded by the Board, the motion will be treated as a motion for summary judgment under Fed. R. Civ. P. 56. Fed. R. Civ. P. 56(c) provides that summary judgment is warranted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Should the Board determine that Defendant's Amended Motion to Dismiss may be considered as a Motion for Summary Judgment and that summary judgment can be evaluated at this stage, Petitioner requests the opportunity to fully brief the summary judgment issues pursuant to Fed. R. Civ. P. 56(f) which provides that after giving notice and a reasonable time to respond, a court may grant summary judgment for a nonmovant.

Respectfully submitted,

/Heather A. Siscel/

Heather A. Siscel  
Joseph T. Jasper  
Mark G. Hanley  
HANLEY, FLIGHT & ZIMMERMAN, LLC  
150 South Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
Telephone: (312) 580-1020  
Attorneys for Petitioner

Dated: October 4, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing BRIEF IN OPPOSITION TO DEFENDANT'S AMENDED MOTION TO DISMISS was served upon Defendant by depositing a copy of same with the United States Postal Service, first class postage prepaid, on this date, addressed to:

Vito Laera  
5960 SW 32 Terrace  
Fort Lauderdale, FL 33312

Dated: October 4, 2012

**/Heather A. Siscel/**

Heather A. Siscel  
Joseph T. Jasper  
Mark G. Hanley  
HANLEY, FLIGHT & ZIMMERMAN, LLC  
150 South Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
Telephone: (312) 580-1020  
Attorneys for Petitioner